

BOARD OF APPEALS CASE NO. 5288

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BEFORE THE

APPLICANT: Michael Treadwell

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ZONING HEARING EXAMINER

**REQUEST: Special Exceptions to store
commercial vehicles & conduct construction
services in the Agricultural District;
1527 Harkins Road, Pylesville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/18/02 & 9/25/02

HEARING DATE: November 4, 2002

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Record: 9/20/02 & 9/27/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Michael S. Treadwell, is requesting a special exception, pursuant to Section 267-53D(1) and 267-53H(1) of the Harford County Code, for construction services and storage of commercial vehicles in an AG/Agricultural District.

The subject parcel is located at 1527 Harkins Road, Pylesville, MD 21132 and is more particularly identified on Tax Map 9, Grid 2D, Parcel 227. The subject parcel consists of 6.166± acres, is zoned AG/Agricultural, and is entirely within the Fourth Election District.

Mr. Michael Treadwell appeared and testified that he operates a business that does hauling as well as excavation work. His business hauls stone, gravel dirt and stock as well as repair of sewer lines, excavation of basements, installation of septic systems and minor grading. During the winter months his trucks do snow removal and spread salt on public highways. His property is improved by a home, barn and shed. The Applicant proposes to construct a 120 ft. by 60 ft. parking area to the rear of the barn and shed. To the west of this area is a cornfield and a tree line with underbrush. The closest home on the west side is one-quarter mile away. To the east is second growth mature forest cover and the closest home on the east side is 500+ feet away. The mature stand is composed of both evergreen and deciduous trees that provide complete screening. The Applicant proposes to park the following vehicles on his property:

- 2 - 1 ton pickup trucks
- 1 - backhoe loader
- 1 - track loader
- 2 - tri-axel 70,000 pound dump trucks
- 1 - 20 ft. trailer
- 1- 30 ft. trailer

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He would also like permission to add a skid loader and another dump truck in the future.

The Applicant states that his hours of operation are generally 4:30 a.m. to 6:00 p.m., 5 days per week. In many cases equipment is off of his property on a job site for 2 to 3 weeks at a time. He employs one dump truck driver who picks up his truck on Monday and returns it on Friday. The Applicant indicated he has never encountered any traffic problems along MD Route 136 (Harkins Road). The Applicant indicated none of his neighbors had complained about this business in the past. Complete screening is already provided.

The Department of Planning and Zoning was represented by Anthony McClune, Manager, Division of Land Use Management. The Department recommends approval of this request subject to 4 conditions.

There were no persons who appeared in opposition to the subject request.

CONCLUSION:

The Applicant, Michael S. Treadwell, is requesting a special exception, pursuant to Sections 267-53D(1) and 267-53H(1) of the Harford County Code, for construction services and storage of commercial vehicles in an AG/Agricultural District.

The applicable Harford County Code Sections to this request follow:

Section 267-51. Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.

Section 267-52. General regulations.

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.

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- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.**

Section 267-53D(1) . Motor vehicle and related services.

(1) Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:

- (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.**
- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.**
- (c) A minimum parcel area of two (2) acres shall be provided.**

Section 267-53H(1). Services.

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.**

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Turning first to the statutory provisions for grant of a special exception the Hearing Examiner makes the following specific findings of fact:

Section 267-53H. Services.

- (1) **Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to residential lot or visible from a public road.**

There was sufficient evidence presented that the parking area proposed will be fully screened by existing vegetation and buildings.

Section 267-91:

- (1) ***The number of persons living or working in the immediate area.***

This area of the County is rural in nature with no major residential developments. With the amount of farm activity in the area, large vehicles and equipment are not unusual for the community. There is only one employee who arrives on Monday and returns on Friday.

- (2) ***Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.***

Access to the property is from MD Route 136, Harkins Road, which is listed in the County's Transportation Plan as a Major Rural Collector Road. There is adequate sight distance for safe ingress and egress.

- (3) ***The orderly growth of the neighborhood and community and the fiscal impact on the county.***

The proposal is a use that is permitted in the Agricultural District with Board approval. The use should not have an adverse fiscal impact.

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- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

These vehicles should not create any more impact than other farm equipment and trucks that are operated in the area on a regular basis.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The County's local Sheriffs Department and the Maryland State Police will provide police protection. Fire protection will be primarily from the local volunteer fire departments. Water and Sewer is provided to the site from an on site well and septic system. The Applicants are required to obtain a private hauler to dispose of trash themselves.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

This is a permitted use in the AG zone if specific requirements are met, therefore presumptively consistent with good planning and zoning principles.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

Not applicable to this request.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

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There are no environmental features that will be impacted by this request. There is an existing stream on the eastern half of the parcel but it will not be impacted by this proposal.

(10) *The preservation of cultural and historic landmarks.*

Not applicable to this request.

The Hearing Examiner finds that the Applicant's request can meet or exceed all of the specific requirements of the Code.

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

"...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted).

These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied."

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Hearing Examiner finds that this use at this location will have no impacts greater or different than a similar use located on another parcel within the AG Zone. Based on the foregoing, the Hearing Examiner recommends approval subject to the following conditions:

1. The Applicant obtain any and all necessary permit and inspections.
2. The Applicant shall submit a site plan to be reviewed and approved by the Development Advisory Committee.
3. A revised final plat be recorded reconfiguring the septic reserve area as required by the Department of Health.
4. All equipment shall be stored in the proposed parking area fully screened from view. If a building is later proposed to house equipment used by the Applicant, that proposal will need to be approved by the Department of Planning and Zoning prior to construction.
5. The Special Exception is for the use of the Applicant alone and this grant may not be conveyed or transferred to a subsequent owner.

Date NOVEMBER 25, 2002

William F. Casey
Zoning Hearing Examiner